Decision for dispute CAC-UDRP-103217

Case number	CAC-UDRP-103217
Time of filing	2020-08-07 08:52:18
Domain names	adhash.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	AdHash

Respondent

Name	Dobromir Kamburov

Respondent representative

Organization	Lewis & Lin, LLC

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the European Union Trademark n° 018052227 with filing date 16 April 2019 and registration date 20 August 2019. The mark consists of the stylized letters “AH” combined with the verbal element “AdHash”, and is protected for various services in classed 35 and 38.

The Complainant uses the domain name <adhash.org> for its company website. The Complainant registered this domain name on 11 October 2018.

The Respondent acquired the disputed domain name <adhash.com> on 29 October 2018, i.e. a few days after the Complainant registered <adhash.org>, but before the filing date of the Complainant’s trademark mentioned above.

FACTUAL BACKGROUND

The Respondent and the Complainant’s co-founder and CEO, Mr. Stoev, were long time business partners and co-founders of the US company AdTrader, Inc. (“AdTrader”), a digital advertising company. This former business relationship between the Respondent and Mr. Stoev fell apart, and they are now parties to a complex international business dispute around the demise of AdTrader.

The Respondent did not use the disputed domain name immediately after acquiring it on 29 October 2018. Only on or around 28 November 2019 the Respondent arranged for an automatic redirection of web users visiting the disputed domain name to a gay porn website.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the Complainant's advertising technology business was created and built independently of AdTrader's business. According to the Complainant, the Respondent closely monitored Mr. Stoev's business activities in 2018, and, when he noticed the registration of <adhash.org>, immediately acquired the disputed domain name <adhash.com> in order to use it as a "tool" to inflict damage on Mr. Stoev within their pending dispute around AdTrader.

RESPONDENT:

The Respondent contends that the "AdHash" business was a spinoff from AdTrader and created using AdTrader resources. The Respondent contends that Mr. Stoev, while CEO of AdTrader, surreptitiously, and improperly, used AdTrader's office in Bulgaria and AdTrader employees to work on development of the AdHash business. According to the Respondent, the Complainant does not have rightful ownership in the "AdHash" trademark and operates an illegitimate business that was funded in bad faith by the Complainant using assets from a company founded by both the Respondent and Mr. Stoev, AdTrader.

The Respondent further argues that the present domain name dispute is part of a broader and complex international business dispute between the parties, and is therefore beyond the scope of the UDRP.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The original Complaint did not mention the shared history of the Respondent, Mr. Stoev and their former joint business AdTrade, but merely stated that the disputed domain name was probably registered by "a competitor or a third-party trying to disrupt our business and cause financial harm". The Respondent regards this omission as an attempt to mislead the Panel, and has objected to a supplemental filing by the Complainant in which the Complainant replied to the Respondent's view on their shared history (as laid out in the Response). In accordance with UDRP Rule 10(d), the Panel determined to admit both Parties' supplemental submissions, so that both have been duly considered before rendering this decision. While unsolicited supplemental filings are generally discouraged, the Panel notes that the Respondent had used a privacy protection service to register the disputed domain name, so that the Complainant was unable to identify the Respondent's true identity as registrant of the disputed domain name. In the course of the proceedings the CAC's Registrar verification revealed the Respondent's true identity, and the CAC set the Complainant a time limit of 5 days (which included a Saturday and a Sunday) to amend the Complaint in order name the correct Respondent. It might have been possible for the Complainant to provide

further details about the Respondent and the Parties' shared history in this amended Complaint, which the Complainant failed to do. But the Panel regards it nevertheless as adequate in this exceptional case to consider the supplemental filings in the interest of a decision that is not formalistic, but materially just and fair.

The Respondent has argued that the Parties' dispute is too complex and therefore beyond the scope of the UDRP, so that it should (only) be decided in a court of law. The Panel agrees that the core of the Parties dispute, i.e., whether or not the current AdHash business was inappropriately taken away from the former AdTrade business, is beyond the scope of the UDRP. The documents presented by the Parties indicate that the business idea and/or the technology behind the Complainant's business may already have existed when AdTrade was still existent and operational. The Panel has not seen any evidence, however, that the name "AdTech" as well was also already considered at that time. In deciding this UDRP dispute the Parties former business relationship, the potential IP rights they may have in certain inventions or know-how, and the (business) contracts they have formerly concluded are entirely irrelevant.

The Panel is therefore satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Both Parties agree, and so does the Panel, that the disputed domain is confusingly similar or identical to the Complainant's trademark cited above. The Respondent accepts that the Complainant succeeded in registering this trademark with the European Union, but argues that there is no goodwill in that mark. Under the European Union's "first-to-file" trademark regime, however, a registered trademark is already a "full" and unrestricted right, even if it has never been used in business (at least during the first five years after registration). The extent of the Complainant's actual use of its trademark is therefore irrelevant.

As to the Respondent's rights or legitimate interests in respect of the domain name, the Respondent claims that "[a]s a principal owner of AdTrader, Dobromir has a claim to joint ownership of the AdHash name and business under Bulgarian law – which was conceived and paid for by AdTrader and diverted by Martin Stoev." As mentioned above, it seems possible that the business idea and/or the technology behind the Complainant's business may already have existed when AdTrade was still existent and operational. The Respondent has not claimed, however, that the name "AdTech" as well was also already considered at that time. The Parties may want to litigate in an ordinary court of law whether the Respondent, or any other third party involved in the former AdTrade business, has certain claims to the Complainant's business or technology. The Panel fails to see, however, how the Respondent could have any rights in the name "AdHash" as such. The Panel is therefore satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

The Panel is finally convinced that the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of the Complainant. Even though both Parties are active in the ad-tech industry it is not quite clear whether they can be considered as "competitors" pursuant to paragraph 4(b)(iii) of the Policy. But even if they are not "competitors" in this sense, by forwarding the disputed domain name to a gay porn website the Respondent still tries to disrupt the Complainant's business and thereby abuses the disputed domain name as a "weapon" in the unresolved AdTrade dispute; this is in no way better than a "normal" competitor abusing a domain name for such purpose, and is sufficient to assume bad faith pursuant to paragraph 4(a)(iii)of the Policy. As the Respondent has registered the disputed domain name only a few days after the Complainant's registration of <adhash.org>, and given the lack of any explanation how the Respondent might have used the disputed domain name in a legitimate way, the Panel is convinced that the Respondent has not only used but also registered the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **ADHASH.COM**: Transferred

PANELLISTS

Name	Dr. Thomas Schafft

DATE OF PANEL DECISION 2020-09-18

Publish the Decision